

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GARY L. MCDUFF, *et al.*,

Defendants.

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Civil Action No. **3:08-CV-526-L**

ORDER

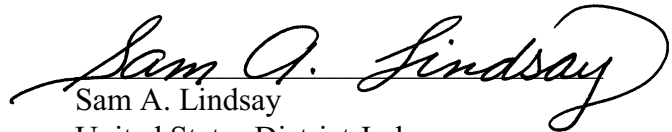
Before the court is Defendant Gary L. McDuff's ("Defendant") Motion to Set Aside Void Judgment for Defective Service of Process Under Rule 60(b)(4) (Doc. 61), filed June 8, 2016. On September 20, 2016, Magistrate Judge Renée Harris Toliver the entered Findings, Conclusions and Recommendation of the United States Magistrate Judge ("Report"), recommending that the court deny the Motion to Set Aside Void Judgment for Defective Service of Process Under Rule 60(b)(4). As of the date of this order, no objections to the Report were received.

After reviewing the motion, briefs, record in this case, and Report, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **denies** the Motion to Set Aside Void Judgment for Defective Service of Process Under Rule 60(b)(4) (Doc. 61).

The court prospectively **certifies** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. 24(a)(3). In support of this certification, the court **accepts and incorporates** by reference the Report and the court's order accepting the Report. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the foregoing orders, the

court concludes that any appeal of this action would present no legal point of arguable merit and would therefore be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the clerk of the United States Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; Fed. R. App. 24(a)(5).

It is so ordered this 17th day of October, 2016.


Sam A. Lindsay
United States District Judge